

himself to examine Government records and make enquiry from persons who are likely to have information, so as to be able really to dispose of the whole question exhaustively².

The claims made will be found to come under one or other of three distinct heads, and a moment's consideration will enable any one to understand that they cannot all be dealt with in the same way:—

- (1) Claims to land ("interest in or over land") in the area proposed to be constituted a reserved forest.
- (2) Claims to a right-of-way (public or private) to water-course, or to use of some spring (or pond for watering cattle or otherwise).
- (3) Claims to forest rights, grazing, wood-cutting, and so forth.

SECTION II.—CLAIMS TO LAND.

§ 1.—*Nature of the Claims.*

It may appear that inside the proposed forest are plots of land held in proprietary right, on mortgage, and so forth. It is, of course, possible also that some one may claim the *entire area* of the proposed reserve; but this is not likely, since the general position and *status* of the land will have been known before the proposal to form a reserve was notified³.

The most usual form of such claims is to plots of land either compact or scattered about within the forest area. The true extent and limits of these plots it may sometimes be difficult to ascertain. But if the plots have been properly and lawfully

² The Indian Act has omitted to state that the Forest Settlement Officer is to hear, record and decide on objections which the forest officer in attendance may have to make to any claim (Burma Act, section 9.) But it is always the practice to do so, and it is clearly the intention of the Act that this should be done, because an appeal may afterwards be lodged (section 16) in the interest of the forest, and if the objection had not been considered and adjudged in the first instance, the appellate court would be at a disadvantage in deciding the appeal.

³ If, for example, it was known that Government had given up the proprietary right, and only retained the right to the trees, it would be no use attempting to proceed under chapter II; section 79 would have to be made use of.

brought under cultivation, there should be either settlement papers and measurements, or the terms of a distinct permission, in writing (signed by some Land Revenue authority), which show the position and area of the land permitted to be occupied.

In Himalayan forests the habit of the people to clear a little patch here and another there, all over the forest, is inveterate and has to be guarded against.

These little patches are often commenced by a permission, not to cultivate, but to cut six or seven trees only; a clearing is then surreptitiously made on the spot where the trees were felled: at a suitable opportunity the little patch is further extended round the edge; then a few more trees are cut, or are observed to die conveniently, and ultimately two or more of these patches unite into one. This process goes on till either the forest disappears, or else is so "honey-combed" that, unless the land can be reclaimed for forest and planted up, the utility of the whole is destroyed. Land brought under cultivation in this way may always be regarded with suspicion. It should be measured, and, whenever it is possible to trace the permission to clear, the area should be reduced to what was really authorized.

Clearings of this sort are also made, not directly for cultivation but for herding cattle⁴; in this case it is impossible that they can be the subject of any permanent right, and the allowance of any interest in them will rather depend on arrangements determined on with reference to grazing rights, than on any right to the soil cleared.

§ 2.—*Method of Settlement.*

When the true extent, position and authority for the occupation of such inclosed land has been ascertained, the Act (section 10) empowers the Forest Settlement Officer—

- (1) *to exclude the land from the limits of the forest, i.e., either to alter the proposed boundary so as to let it remain outside the forest, or leave the land inside the*

⁴ In the North-West Himalaya such clearances are called "tách."

forest as a privately-owned plot not subject to the forest régime. In this case great care must be taken that the limits of the land are permanently demarcated so as to prevent future encroachment; and that all subsidiary questions are settled, such as a right of way for the cultivator and his cattle through the forest to the land⁶, any precaution about lighting fires on the land, which may spread to the forest, and so forth;

- (2) "*he may come to an agreement with the owner for the surrender of his right.*" Under this head an exchange is often possible. Such cultivation is often of a very rude kind, if indeed it is really permanent at all; it will often happen in any case that the owner will agree to give up the plot in exchange for another piece of equal extent (or a little more, as the case may be) in another place. In this way a suitable corner of the forest may be cut off as a block of available land in which a number of little patches inside the proposed forest may be provided for. Under this section money or other compensation can, of course, be given by amicable agreement;
- (3) "*or he may proceed to acquire such land in the manner provided by the Land Acquisition Act.*" In this case the Settlement Officer is vested with the necessary powers under that Act, and the process is compulsory. It would be followed on failure to come to terms under No. 2.

I should remark here that it is always better to resort to the procedure under the expropriation law when there is any doubt about the title to the land, because in that case Government gets

⁶ It would be held in such cases that the owner had always a right of way to his plot, and the right would include a way for cattle or carts according to the nature of the locality and the circumstances of the cultivation. You could hardly in the nature of things, have a plot of land from which you could derive no profit by reason of want of access. This point is expressly ruled in the Italian Civil Code (§ 593) and in the French Civil Code (§ 1018); see also Curasson (I., 331); and so in English law, Kerr's Blackstone, Vol. III, pp. 35-36 (London, 1857); Williams, p. 322.